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Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

Bruce Preston Williams

Serial No. 10/604,304

Group Art Unit: 3618

Filed: 07/09/2003

Examiner: Pham, Hau Van

For: DEPLOYABLE STEP FOR MOTOR VEHICLES

Attorney Docket No. 202-1228

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

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Nicole M. Thurman

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal dated November 14, 2005, for the above-identified application.

I. Real Party in Interest

The real party in interest in this matter is Ford Global Technologies, LLC, which is a wholly owned subsidiary of Ford Motor Company, both of Dearborn, Michigan (hereinafter "Ford").

II. Related Appeals and Interferences

There are no other known appeals or interferences which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of the Claims

Claims 1-8 and 11-12 stand rejected in the Final Office Action.

IV. Status of Amendments

No Amendments were filed after the final rejection.

V. Summary of Claimed Subject Matter

As set forth in Applicant's specification and drawings, and with particular reference to Figures 1, 3, 4 and 9 and paragraphs 28 and 29 of Applicant's specification, Applicant's claimed invention includes a step 34 having a first position, 66, in which step 34 is considered "up" or in a stowed position. Step 34 also has a second, or deployed, position, 68, shown in Figures 7 and 9. Step 34 may be unlocked and pulled to an angle that is both away from motor vehicle 10 and down towards the ground, which will allow step 34 to travel for approximately 90 degrees of rotation to the second position. While in the second position, step 34 may be used as "staircase" so as to allow a person to step to from the ground onto step 34 and then onto bumper 22. Note from Applicants' Figures as well as from Claim 1, that step 24 is attached to a rear structural member of a vehicle body such that the trailer hitch included in the motor vehicle is operational when the step is either in the first (stowed) or second (deployed) position.

VI. Grounds of Rejection to be Reviewed on Appeal

Are Claims 1-8, and 11 properly rejected under 35 U.S.C. 102(e) as being anticipated by Blake (6,874,806)?

Is Claim 12 properly rejected under 35 U.S.C. 103(a) as being unpatentable over Blake (6,874,806) in view of Hehr (6,685,204)?

VII. Argument

The Rejection of Claims 1-8 and 11 under 35 U.S.C 102(e) as anticipated by Blake (6,874,806, "Blake") is not sustainable.

As set forth in §706.02 of the Manual of Patent Examining Procedure, Applicant's claims are anticipated by *Blake* if any only if *Blake* teaches every aspect of the claimed invention, either explicitly or impliedly. Moreover, any feature not directly taught must be inherently present. In this case, *Blake* cannot comprise a colorable basis for rejection of Applicant's claimed invention pursuant to section 102(e) because *Blake* does not teach a step which is mounted so that a trailer hitch associated with the step is operational when the step is in either of its first and second positions.

In making his rejection, the Examiner has relied upon *Blake* at Figures 5A and 5B and 8. This rejection has two infirmities. First, the structure shown in Figures 5A and 5B is mostly a plastic fascia plate 188 described in *Blake* as "purely aesthetic" because the structural strength of the cover assembly 186 properly lies with the cover plate 156. Thus, the small cover plate, 156, being sufficient to support only an aesthetic cover, cannot function as a step. Moreover, at Figures 5A and 5B *Blake* lacks any mechanism to prevent cover 156 from rotating downwardly if it is stepped upon. Although the cover shown in *Blake*'s Figure 8 apparently is lockable in open position, the reader is left to wonder whether *Blake*'s plate 516 of Figure 8 will sustain the torque imposed by a person stepping upon the plate.

A bigger problem with the Examiner's rejection posited upon *Blake* resides in the fact that none of the embodiments shown by *Blake* can function as a step allowing mounting of a trailer hitch regardless of the position the step happens to be in. In each case, *Blake*'s device prevents mounting of a hitch when the device is in the upper position. This is not astounding, given that *Blake* discloses a device used primarily as a hitch cover, and not a step. For the foregoing reasons, Claims 1-8 and 11 are not properly rejected under 35 U.S.C. 102(e) as being anticipated by *Blake* and the Examiner's rejection should be reversed.

The rejection of Claim 12 under 35 U.S.C. 103(a) as being unpatentable over Blake (6,874,806) in view of Hehr (6,685,204) is not sustainable.

Applicant's Claim 12 claims a step as set forth in Claim 1, and further having a lockout mechanism which is actuatable by a sliding pin. The Examiner basis his rejection of this claim on *Blake* in view of *Hehr* (6,685,204). *Hehr* teaches use of a locking pin for a trailer hitch, but teaches nothing regarding a folding step, and, as a consequence, neither *Blake* nor *Hehr*, whether taken singly or in combination of each other, either teach or suggest Applicant's claimed invention in Claim 12, and Claim 12, too, should be the subject of reversal of the Examiner's rejection.

VIII. Claims Appendix

A copy of each of the claims involved in this appeal, namely Claims 1 and 3-17, is attached as a Claims Appendix.

IX. Evidence Appendix

None.

X. Related Proceedings

None.

XI. Conclusion

For the foregoing reasons, Appellant respectfully requests that the Board direct the Examiner in charge of this case to withdraw the rejection.

Please charge any fees required in the filing of this appeal to deposit account 06-1510.

Respectfully submitted,

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CLAIMS APPENDIX

Claim 1. A motor vehicle comprising:

a body having a front end, a rear end and a roof; a plurality of wheels coupled to said body;

a rear structural member located at said rear end of said body;

a trailer hitch attached to said structural member;

a pair of brackets attached to said structural member and spaced a predetermined distance apart;

a rear bumper configured to both cover said structural member and to allow for access to said brackets; and

a step pivotally coupled to said brackets and operative to articulate about an axis between first and second positions, with said brackets being attached to said structural member such that said trailer hitch is operational when said step is in either of said first or second positions.

Claim 2. A motor vehicle according to claim 1, wherein said rear structural member is formed with said brackets integral therewith.

Claim 3. A motor vehicle according to claim 1, wherein said brackets are independent pieces and are attached to said rear structural member by one of welding, bolting, and riveting means.

Claim 4. A motor vehicle according to claim 1, wherein said brackets extend a predetermined distance from said structural member and said bumper.

Claim 5. A motor vehicle according to claim 1, wherein said step is u-shaped having two leg members, with one of said leg members each attached to each of said brackets, and a planar member disposed between said leg members and wherein said planar member has a first side and a second side.

Claim 6. A motor vehicle according to claim 5, wherein said planar member is substantially vertically oriented when said step is in said first position, and substantially horizontally oriented to provide a step when in said second position.

Claim 7. A motor vehicle according to claim 5, wherein said first side of said step provides a stepping surface when said step is in said second position and wherein said first side includes a plurality of traction improving grooves extending perpendicular to said axis for the length of said planar member.

Claim 8. A motor vehicle according to claim 5, wherein said leg members are contoured to render said step flush with said bumper when said step is in said first position.

Claim 11. A motor vehicle according to claim 1, further comprising a lockout mechanism for said step.

Claim 12. A motor vehicle according to claim 11, wherein said lockout mechanism is a spring loaded sliding lockout key comprising:

- a sliding pin having a first and second end; a handle attached to the first end of said pin;
- a spring positioned on the second end of said pin; and
- a retainer positioned on said second end of said pin operative to hold said spring in place.

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EVIDENCE APPENDIX

NONE.

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